THE HON'BLE SRI BILAL NAZKI, THE ACTING CHIEF JUSTICE

AND

THE HON'BLE DR JUSTICE G.YETHIRAJULU

-

WRIT PETITIONS No.1264 of 2001 & 12201 of 2004

And

WRIT APPEAL No.1248 of 2004 &

WRIT APPEAL No..1159 of 2005

% 10-06-2005

Between:

Hari Rama Lakshmi & others.

.....PETITIONERS/APPELLANTS

AND

The District Collector, Khammam District, Khammam & Others.

.....RESPONDENTS

For the Petitioners : SMT.M.VINOBHA DEVI
For the Respondents : GP FOR REVENUE

< Gist:

> Head Note:

? CITATIONS:

1. AIR 1997 SC 2703
2. AIR 1996 SC 1352
3. (1995) 5 SCC 272
4. 1965 (1) AWR 74

C/15

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE TENTH DAY OF JUNE TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE SRI BILAL NAZKI, THE ACTING CHIEF JUSTICE

and
THE HON'BLE DR JUSTICE G.YETHIRAJULU

WRIT PETITIONS No.1264 of 2001 & 12201 of 2004

And

WRIT APPEAL No.1248 of 2004 &

WRIT APPEAL No.1159 of 2005

WRIT PETITION NO : 1264 of 2001

Between:

1. Hari Rama Lakshmi W/o.Late Hari Satyanarayana, aged: 56 years.
2. Hari Anantha Ramulu S/o.Late Hari Satyanarayana, aged: 37 years.
3. Hari Srinivas S/o.Late Hari Satyanarayana, aged:35 years.
4. Hari Venkataramana S/o.Late Hari Satyanarayana, aged:33 years.

5. Hari Chandra Sekhar S/o.Late Hari Satyanarayana, aged: 31 years.

6. Hari Phanikumar S/o.Late Hari Satyanarayana, aged: 29 years.

(All are R/o.H.No.7-44, Brahman Street, Nelakondapally, Khammam District)

..... PETITIONERS

AND

1. The District Collector, Khammam District, Khammam.

2. The Mandal Revenue Officer, Nelakondapalli, Khammam District.

3. The Executive Engineer (A/c) C & M Division, Tekulapalli, Khammam District. .....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue an appropriate writ, order or direction preferably one in the nature of Writ of Mandamus, declaring the action of the respondents in not repatriating the land acquired to us as arbitrary and illegal, and further direct the respondents to reconvey the land of an extent of Ac.7.18 guntas situated in S.No.228/1 of Nelakondapally village and Mandal, Khammam District, to the petitioners herein forthwith.

Counsel for the Petitioners : SMT.M.VINOBHA DEVI

Counsel for the Respondents : GP FOR LAND ACQUISITION &

GOVERNMENT PLEADER FOR IRRIGATION.

WRIT PETITION NO : 12201 of 2004

Between:

H. Rama Lakshmi W/o Late Satyanarayana
R/o Brahaman Street, Nelakondapally (V) & (M) Khammam District

..... PETITIONER

AND

1 The District Collector, Khammam Khammam District
2 The Assistant Director of Mines & Geology Khammam, Khammam District
3 The Superintending Engineer, Nagarjuna Sagar Left Canal Operation & Maintenance
Tekulapalli, Khammam Khammam district
4 The Mandal Revenue Officer, Nelakondapalli Mandal Khammam District
5 The AP Social Welfare Residential Educational Institutions Society rep by Secretary,

Masab Tank Hyderabad

6 M/s. Sharada Stonex CRG Apartments, Flat No. 406, Nehru Nagar Khammam,

Khammam District rep by Proprietor P Muralikrishna S/o Janakiramaiah R/o

Khammam District

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue an appropriate Writ, order or direction more particularly one in the nature of Writ of Mandamus, declaring the proceedings of the First Respondent herein in Rc. No. E2/5040/2002, dated 13/3/2004 in permitting the 6th Respondent herein to construct the school Complex of AP Social Welfare Residential High School for granting leases in Sy. No. 226/2, 227 and 228/2 & 3 of Singareddipalem Village, while refusing to consider the case of the petitioner on erroneous grounds as illegal, unjust, arbitrary, discriminatory, thereby violative of the fundamental rights guaranteed to the petitioner herein under Articles 14, 19 and 21 of the Constitution of India and consequentially set a side the proceedings of the First Respondent herein issued in Rc. No. E2/5040/2002 dated 13/3/2004 by directing the Respondents herein to consider the case of the petitioner for grant of lease in Sy. No. 228/2 and 3 singareddipalem Village, Khammam District in preference to the 3rd parties like the 6th Respondent herein Pending result in WP No. 1264 of 2001.

Counsel for the Petitioner:MR.K.R.PRABHAKAR

Counsel for the Respondents No.1 to 4 : GP FOR INDUSTRIES

Counsel for the Respondent No.5 : MR.VIJAYA BHASKAR MOOLA.

Counsel for the Respondent No.6 : SMT.N.SHOBHA, ADVOCATE.

WRIT APPEAL NO : 1248 of 2004

(Writ Appeal under Clause 15 of the Letters Patent against the Order dated 22/04/2004 in WP NO :13402 OF 1994 on the file of the High Court.)

Between:

1 Hari Satyanarayana (Since Died). Rep. by his L.Rs.
2 Hari Ramalakshmi, w/o Late Hari Satyanarayana
3 Hari Anantha Ramulu, W/o Late Hari Satyanarayana
4 Hari Srinivas, S/o Late Hari Satyanarayana,
5 Hari Venkataramana, S/o Late Hari Satyanarayana,
6 Hari Chandra Sekhar, S/o Late Hari Satyanarayana,
7 Hari Phani Kumar, S/o Late Hari Satyanarayana,
All are R/o H.No. 7-44, Brahaman Street, Nelakondapally, Khammam District.

..... APPELLANTS

AND

1 The District Collector, Khammam, Khammam District.
2 The Mandal Revenue Officer, Nelakondapalli, Khammam District.

3 The Executive Engineer, (A/C), C & M, Division, Tekulapalli, Khammam District.

.....RESPONDENTS

Counsel for the Appellants : MR.K.R.PRABHAKAR

Counsel for the Respondents : GP FOR REVENUE

WRIT APPEAL NO : 1159 of 2005

(Writ Appeal under Clause 15 of the Letters Patent against the Order dated 11/09/2002 in WP NO :17288 OF 2002 on the file of the High Court.)

Between:

Hari Phani Kumar S/o.Late Hari Satyanarayana, Aged about 33 years,

R/o.H.No.7-44, Brahaman Street, Nelakondapally, Khammam District.

..... APPELLANT

AND

1 M/s.Sharada Stonex, rep. by its Proprietor P.Muralikrishna S/o.Janakiramaiah,

aged about 39 years, R/o.Khammam District.

2 The District Collector, Khammam District, Khammam.
3 The Superintendent Engineer, NSLC, Tekulapalli, Khammam District.

4 The Mandal Revenue Officer, Nelakondapalli, Khammam District.
5 The A.P.Social Welfare Residential School, Singareddy Palem, Nelakondapalli,

Khammam District.

.....RESPONDENTS

Counsel for the Appellant : MR.K.R.PRABHAKAR

Counsel for the Respondent No.1 : SMT.N.SHOBA

Counsel for the Respondents No.2 to 4 : GP FOR INDUSTRIES

Counsel for respondent NO.5 : MR.MOOLA VIJAYA BHASKAR

The Court made the following :

COMMON JUDGMENT : (Per Hon'ble Sri Bilal Nazki, ACJ)

As the matters in these writ petitions and writ appeals raise same questions of law and fact, they are being disposed of by this common judgment.

The facts relating to writ petition No.12201 of 2004 are, it challenges the proceedings of the 1st respondent in Rc.No.E2/5040/2002, dated 13.3.2004 in permitting the 6th respondent to construct the school complex of A.P.Social Welfare Residential High School. It also seeks consideration of the case of the petitioner for grant of lease in her favour.

The facts leading to filing of the case are that petitioner claimed that petitioner's family had 17 acres of land in Singareddipalem village, Nelakondapalli Mandal, Khammam District. Out of this land, Ac.10-16 gts. was acquired for the purpose of Nagarjunasagar Camp Colony in the year 1969. In 1980, Ac.3-38 gts. of land was again acquired for the purpose of providing house sites to the weaker sections and the family of the petitioner was left with only Ac.2-26 gts. of land. Nagarjunasagar project authorities acquired Ac.17-17 gts. of land in Survey Numbers 228, 226, 224 and 217. Out of this total land of Ac.17-17 gts., Ac.9-28 gts. was left unused. It was handed over to Mandal Revenue Officer for construction of Mandal office complex, although the State was bound to re-convey the land to the petitioner in terms of para 32 of Board Standing Orders, 90 (for short 'B.S.O. 90'). When the petitioner's husband came to know about transfer of land to the Mandal Revenue Officer, he approached the Mandal Revenue Officer and District Collector, Khammam, requesting re-assignment of land. Authorities assured them that they will consider their case for re-conveyance, but they did not do so. On the other hand part of the land was used for the purpose of construction of Mandal office and part of it was given on lease to respondent No.6 and for construction of a school, an order was passed, being order dated 13.3.2004.

In writ petition No.1264 of 2001, the petitioners submitted that

they were agriculturists and were making their living from the income derived from agricultural produce. Their father was owner of a piece of land measuring Ac.10-16 gts. situated at Nelakondapalli village in Survey Number 228/1. It was acquired in the year 1969 for the purpose of construction of N.S.Canal Camp Colony at Nelakondapally. Pursuant to the land acquisition proceedings, an award was passed by the Land Acquisition Officer on 14.8.1970, compensation was fixed at Rs.9,671-84 at the rate of Rs.800/- per acre plus solatium at the rate of 15%. The construction of the canal was taken up and it was completed in the year 1975. An extent of Ac.9-28 gts. was left unused and it was handed over to Mandal Revenue Officer in June 1987. They claims that the Land Acquisition Officer would have not handed over the land to the Mandal Revenue Officer and it had to be handed over to the owner, as it was not used for the purpose for which it was acquired, in terms of Section 32 of B.S.O. 90. Thereafter, some more land was used by the State and according to the petitioners, still an extent of Ac.7-18 gts. was vacant and they were entitled to its re-conveyance and possession. They also seeks a direction from this Court not to allot the land to an extent of Ac.7-18 gts. to third parties.

Writ Appeal No.1248 of 2004 is filed against the order of learned Single Judge in writ petition No.13402 of 1994. The learned Single Judge dismissed the writ petition, holding that it was well settled that land acquired by the State even if not used for the purposes for which it was acquired, cannot be re-conveyed to its original owners.

Writ Appeal (SR) No.46002 of 2004, which is taken on record, is also filed against the order of learned Single Judge, whereby the learned Single Judge disposed of writ petition No.17288 of 2002, directing the respondents to consider the representation of the petitioner dated 19.5.2002.

The question which needs to be answered in all these writ

petitions and writ appeals is, whether the land acquired by the Government in the year 1969 could be re-conveyed to original owners as part of it was not used for the purposes for which it was acquired.

We have heard learned Counsel for the parties and gone through para 32 of B.S.O. 90. This lays down a methodology by which the land, which is not required for the public purpose for which it was acquired, can be disposed of. There are various provisions in this para and in para 32(3), it is stated,

> *"In cases where the circumstances described in 2(a) and 2(b) do not exist, or where the adjacent owner does not after due notice, accept the offer, the land should be offered at cost price to the parties to whom the proprietary right and the right of occupancy, if any, in the land originally belonged or to their heirs."*

In order to appreciate this sub-clause, 32(1) and 32(2) also needed to be reproduced –

> *"**(32) Disposal of land which is no longer require for the public purpose for which it was acquired.***
>
> 1. *No land shall be disposed of, under this paragraph, to any person other than the citizen of India, except by the Collector or the Board and with the previous permission of State Government, every grant made under this paragraph shall be subject to the condition that, if the land is alienated without the sanction of Government in favour of any person other than a citizen of India, the grant shall thereupon become null and void.*
>
> 2. *No application for sale of land under this Standing Order to a Company, association or society should be considered unless such company, association or society is a company within the meaning of that word in Sec.3(1)(i) of the Companies Act 1956 (Central Act 1 of 1956) or has been registered under the Societies Registration Act 1860 (Central Act XXI of 1860) the Madras Co-operative Societies Act, 1932 (Madras Act VI of 1932), Multi-Unit Co-operative Societies Act, 1942 (Central Act VI of 1942)*

the Insurance Act, 1938 (Central Act IV of 1938) the Indian Trade Union Act, 1926 (Central Act XVI of 1926) or by an Act of Parliament of the Union of India or of the State Legislature in the Union of India. The above order insisting on registration does not apply to Roman Catholic Churches, dioceses, other Toman Catholic Mission and Congress Organisations.

When land acquired for a public purpose, is subsequently relinquished it should be disposed of as follows: --

i. *If the land relinquished is likely to be again required for public purposes, it should be merely leased out for such term as may be considered, desirable in each case.*

ii. *If the land is situated within half a mile of the boundary of a railway station, it should be dealt with under the special rules applicable to such land which are given in Standing Order No.15, paragraph 38, clause (x). If under those rules it can be assigned permanently it should be disposed of under clause (iv) below.*

iii. *If the land does not fall under either of the above descriptions and was originally building site or town land, it should be disposed of under the rules-governing the disposal of Government land of this kind-vide Standing Order No.21. k such lands relinquished by the Departments of the Central Government should be sold in auction like town sites through the agency of the Revenue Divisional Officers and the sale proceeds credited to the department to which the cost of acquisition was originally debited.*

G.O.Ms.1763,Rev.,dt.28-8-37. B.P.36,Press,dt.20-4-38.

iv. *If the land is not declared unfit for permanent occupation under clause(i) or (ii) above and was agricultural or pastorol land at the time of the acquisition, it should be disposed of in accordance with the following instructions which should not be deviated from without the previous sanction of State Government: --*

Such lands should be notified for sale in Public auction by

giving wide publicity in respect of the sales in the villages by beat of tom-tom and affixing notice of sales in conspicuous places in the villages concerned. The date of sale should be fixed allowing an interval of thirty days between the date of publicity and the date of sale. The land shall be sold by public auction subject to the annual assessment. There shall be no upset price except in the case of railway relinquished lands where a minimum or upset price should be fixed in consultation with Railway Administration or upset price should be fixed in consultation with Railway Administration before auction. If at the time of sale anybody puts forth his claim in respect of any field either as an adjacent owner, or as an original owner or as heir of the original owner, the sale of that field should be stopped and his claim investigated and disposed of in the manner specified in sub-clauses (2) and (3). If it is found that his claim is not proved, the field should be sold by public auction.

(2) (a) Where the land is useless to anyone but the adjacent owner, or

(b) where its possession by any person other than the adjacent owner would interfere with the full enjoyment of the adjoining property by its owner, it should first be offered to the adjacent owner at full market value."

Even if it is accepted that Government is bound to follow this Board Standing Order, even then, the case of petitioners does not fall within para 32(3).

On the other hand the learned Counsel appearing for the State submits that in terms of Land Acquisition Act, when the land is acquired by the State, it vests in the State absolutely free from all encumbrances. Therefore, any Standing Order, if contrary to Section 16 of the Land Acquisition Act, would not be enforceable and any Standing Order, if contrary to Section 16 would have to yield to Section 16 of the Land Acquisition Act. Section 16 of the Land Acquisition Act reads,

*"**16. Power to take possession** :-- When the Collector has made an award under Section 11, he may take possession of the land,*

which shall thereupon vest absolutely in the Government free from all encumbrances."

It came for consideration before the Supreme Court in *State of Kerala and others v. M.Bhaskaran Pillai and another* and Supreme Court in para 4 held,

".....It is settled law that if the land is acquired for a public purpose, after the public purpose was achieved, the rest of the land could be used for any other public purpose. In case there is no other public purpose for which the land is needed, then instead of disposal by way of sale to the erstwhile owner, the land should be put to public auction and the amount fetched in the public auction can be better utilised for the public purpose envisaged in the Directive Principles of the Constitution."

In another judgment reported in *Union of India and others v. Jaswant Rai Kochhar and others*, the Supreme Court also held that land sought to be acquired for one public purpose can be used for another public purpose. Therefore after the land is vested in the State, there is no question of re-conveyance because, the State becomes absolute owner, without any encumbrances, of the land which it acquired and State cannot be forced to re-convey the land to the owner from whom it was acquired years before. At the time of acquisition, fair compensation was paid and after the receipt of compensation by the owners and after the acquisition of the land by the State, the State became the owner and the original owner lost all the rights over the said acquired land.

Reliance has also been placed on a judgment reported in *Administrator, Municipal Committee, Charkhi, Dadri & another v. Ramjilal Bagla & others*. Land in this case was acquired under Punjab Town Improvement Act, 1922 and also under provisions of Land Acquisition Act. Section 44-A to the Punjab Town Improvement Act provides, *"any scheme in respect of which a notification has been published under Section 42 shall be executed by the trust within a period of five years from the date of such notification."* The proviso to

the section however empowers the State Government to extend the said period. The contention before the Supreme Court was that a scheme was framed in terms of Punjab Town Improvement Act, which was not completed within the time stipulated in Section 44-A of that Act, therefore the land should revert back to its original owners. The Supreme Court framed the question in para 13 for an answer in the following terms;

> *"The precise question that arises in this appeal is where a land has been acquired pursuant to and for implementation of a scheme framed under the Act and has vested in the trust, whether the said acquisition becomes invalid and void in case the scheme is not implemented within the period of five years prescribed by Section 44-A and whether the land remaining unutilized at the end of the period prescribed in Section 44-A is liable to be restored to the erstwhile owners/persons interested and if so what are the other consequences that follow."*

The Supreme Court held that Section 44-A was not mandatory and its non-compliance would not lead to nullification of the acquisition, which had become final. In para (b) of para 16 of the judgment, the Supreme Court held,

> *"16. (b) The more important and substantial reason, of course, is that Section 44-A does not provide expressly or by necessary implication that non-compliance therewith results in nullification of the acquisition or in the divesting of title of the trust or that on such non-compliance, the land acquired has to be restored to its erstwhile owners/claimants. It does not also provide, what should happen to the compensation already received by them. Evidently all these aspects could not have been left to be inferred. These are very vital matters and not matters of mere procedure. The divesting of title is a matter of substance and not a formality. So is the restoration of land, return of compensation received, interest, if any, to be paid on such returned amount, compensation for any development and improvements, if any, made on the land by the trust within the period aforesaid. Absence of any provision for the above matters, in our opinion, shows conclusively that the provision in Section 44-A is only directly notwithstanding the use of expression 'shall' therein. The said provision is meant to impress upon the trust and its authorities, the desirability of the time-frame within which the schemes should ordinarily be*

executed. But to construe the said admonition as leading to the consequences suggested by the respondents' counsel would amount not only to reading words into the section which are not there but to reading a whole lot of substantive and procedural provisions into it which the legislature has not thought fit to provide for. Acceptance of the contention urged by the learned counsel for the respondents would entail several complications and situations for which there is no provision in the Act. According to the learned counsel only the land which has not been utilized for the scheme is liable to be restored to its erstwhile owners, but not the land which has already been utilized. A question arises what is 'utilisation' ? Suppose, a road is laid and other amenities provided but the construction of buildings contemplated by the scheme has not taken place. Is it a case of utilization or not ? It may also happen that the nature and character of the land has been changed after acquisition. If so, the question arises whether the land has to be restored to its original owners in the condition in which it was acquired or in the condition in which it is on the expiry of the prescribed period or in the condition in which it is at the time of restoration. What about refund of compensation already received by the erstwhile owners ? Whether they are liable to pay any interest thereon or whether they are entitled to any damages for the deprivation for the period they have been kept out of possession ? These are only a few problems which may arise and are mentioned only to emphasise that not providing for all these matters is a sure indication of the provision in Section 44-A not being mandatory in the sense it is sought to be understood by the respondents."

If the principles laid down in this judgment are applied to para 32 of B.S.O. 90, this Court will come to only conclusion that para 32 cannot be a mandatory provision. We had already held that the land had been acquired in terms of Land Acquisition Act, and under the Land Acquisition Act, after acquisition, the land vests in the State, therefore there is no question of its restoration to its original owner even if it was not utilized for the purpose for which it was acquired.

This para 32 of B.S.O. 90 has been considered by a Division Bench of this Court in a judgment reported in *The State of Andhra Pradesh & another v. K.Venkayya and others*. While considering the said

Standing Order, Court was of the opinion,

> *"It is manifest from Board's Standing Order 90 rule 32(vii) that no right is created in any of the heirs of the original owners to claim the lands. It is only as a matter of grace that the assignment of land is made in favour of persons to whom the proprietary rights or the right of occupancy belong or to their heirs. Sub-clause (3) embodies instructions to the Board of Revenue to offer the land in the circumstances indicated therein to the original proprietors or their heirs. That rule does not interfere with the discretion of the Government envisaged in sub-rule (vii). That being so, it is needless for us to consider whether these rules have statutory force and whether the Government is precluded from acting contrary to the Board Standing Orders."*

For the reasons given hereinabove, the Writ Petitions and Writ Appeals are dismissed. No costs.

We are told that some orders, contrary to this view, were passed by learned Single Judges of this Court in some cases. Some of such judgments were passed in Writ Petitions No.42 of 1988 and 5857 of 1988, which were decided in 1988. Obviously those judgments do not lay down correct law.

_____

BILAL NAZKI, ACJ

10th June 2005.

_____

Dr.G.YETHIRAJULU, J

N.B:

L.R. Copies to be marked.

(B/o)

ajr

N.B.:-

Office shall place the copies of this judgment in respective

bundles after the signatures of their Lordships.

..... REGISTRAR

// TRUE COPY //

SECTION OFFICER

One fair copy to Hon'ble Sri Bilal Nazki, the Acting Chief Justice, for his Lordship's kind perusal.

One fair copy to Hon'ble Dr.Justice G.Yethirajulu, for his Lordship's kind perusal.

To

1. The District Collector, Khammam District, Khammam.

2. The Mandal Revenue Officer, Nelakondapalli, Khammam District.

3. The Executive Engineer (A/c) C & M Division, Tekulapalli, Khammam District.

4 The Assistant Director of Mines & Geology Khammam, Khammam District
5 The Superintending Engineer, Nagarjuna Sagar Left Canal Operation &

Maintenance, Tekulapalli, Khammam Khammam District

6 The Secretary, AP Social Welfare Residential Educational Institutions

Society, Masab Tank Hyderabad
9 The A.P.Social Welfare Residential School, Singareddypalem, Nelakondapalli,

Khammam Djistrict.

10 Two C.Cs. to the GP for Revenue, High Court buildings, Hyderabad (OUT)

11 1 CC to MR.VIJAYA BHASKAR MOOLA

12 2 CD copies

13 8 L.R. Copies.

14 The Under Secretary, Union of India, Ministry of Law, Justice and Company Affairs, New Delhi.

15 The Secretary, A.P.Advocates Association Library, High Court buildings, Hyderabad.

16 2 C.Cs. to the Government Pleader for Industries, High Court buildings, Hyderabad (OUT).

17 2 C.Cs. to the Gjovernment Pleader for Irrigation, High Court buildings, Hyderabad (OUT).